

REMARKS

Status of the Claims

Claims 57, 70-71 and 88 are currently pending in this application.

The Claims are Not Obvious

The Office Action rejects claims 57, 70, 71 and 88 as allegedly obvious in view of Favre *et al.* (U.S. Patent 5,324,821) ("Favre"). Applicants respectfully disagree with the Examiner and assert that Favre does not render the claimed invention obvious.

In making the rejection, the Office Action states that "[t]he instant claims differ from the reference by reciting the corresponding 9-monounsaturated C18 or C20 derivatives." *Office Action of 16 June 2010*, page 3. In attempting to account for the missing elements, the Office states that "Favre teaches acylation utilizing fatty acids having saturated or unsaturated 4 to 24 carbon atoms including palmitic, stearic, oleic, linolenic and lignoceric acids (see col. 3, lines 60-65)." *Id.*

The exact quote from Favre is that "[a]mong the fatty acids whose grafting to the active substance facilitates its incorporation into the lipoproteins, saturated or unsaturated fatty acids having 4 to 24 and in particular 8 to 24 carbon atoms such as, for example, palmitic, stearic, oleic, linolenic, lignoceric, etc. acids, will be cited in particular." *U.S. Patent No. 5,324,821*, Col 3., ll. 60-65.

Applicants note that the current claims are directed to specific fatty acids and not every possible fatty acid as defined by Favre. Indeed, Favre discloses the use of "saturated or unsaturated fatty acids having 4 to 24." Thus, the genus as defined by Favre can include any carbon chain with 4 to 24 carbon atoms with any number of double bonds, including zero ("saturated fatty acid"), with the double bond, if present, occurring at any location. This definition therefore encompasses saturated, monounsaturated and polyunsaturated fatty acids of any size and with any number of double bonds at any location. It is well-established that the physical properties of fatty acids will vary with their degree of saturation or unsaturation. *See* Voet, D. and Voet, J., *Biochemistry*, 2nd Ed. John Wiley & Sons, Inc. 1995, Ch. 11, an excerpt of

was previously presented. Accordingly, the genus as defined by Favre is very large, and not all members of the genus would be expected to have similar properties. For example, one of skill in the art will readily appreciate that a fatty acid with 3, 4, 5 or more double bonds in the carbon chain will have very different properties than a monounsaturated fatty acid chain.

Moreover, there is nothing in the cited art or of record that would explain why one of skill in the art would select the specifically claimed fatty acids. Although Favre may allegedly disclose a genus of fatty acids that encompass the claimed fatty acids, there is nothing in record that would rationally explain why one of skill would choose the specifically claimed fatty acids. The claims, however, specifically recite a select monounsaturated fatty acid. Thus, even though Favre may disclose the use of fatty acids, in very general terms, there is nothing in Saulnier to guide one of skill in the art to choose the specifically claimed fatty acids. Moreover, the Office has not provided any rationale or basis that one of skill in the art would have in choosing the specific fatty acids claimed.

Moreover, Applicants reiterate that Favre is directed to methods of preparing lipoproteins and thus requires the presence of lipoprotein. In contrast, the claims are directed towards methods of achieving a therapeutically beneficial effect of a drug. Formulation of the derivatives as lipoproteins is not an issue in the present application. Favre does not teach or disclose any type of therapeutic effect of the compounds disclosed therein.

Accordingly, Applicants assert that the presently claimed invention is not obvious in view of Favre. Because one of skill would not expect each member the genus disclosed in Favre to behave similarly, the Office must provide some reasoning or rationale as to why one of skill would select the fatty acids specifically claimed. The Office has failed to do so. Accordingly, Applicants assert that the claimed invention would not be obvious in view of Favre. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection.

CONCLUSIONS

Applicants assert that the claims are not obvious in view of the cited art. Applicants respectfully request reconsideration and withdrawal of all outstanding rejections.

Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any necessary fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17, which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a Constructive Petition for Extension of Time in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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